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*Attorneys for Michael J. Miske, Jr. (01)*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL J. MISKE, JR. (01),

Defendants.

CR. NO. 19-00099-DKW-KJM

DEFENDANT MICHAEL J. MISKE,  
JR.'S OBJECTION TO ADMISSION  
OF GOVERNMENT EXHIBIT 6-85  
AND TO EXPERT TESTIMONY ON  
THE LAW; EXHIBIT 1; CERTIFICATE  
OF SERVICE

DEFENDANT MICHAEL J. MISKE, JR.'S OBJECTION  
TO ADMISSION OF GOVERNMENT EXHIBIT 6-85  
AND TO EXPERT TESTIMONY ON THE LAW

Defendant Michael J. Miske, Jr. objects to the admission of government exhibit 6-85, discussed in the government's "Notice Regarding Trial Exhibit 6-85 – Chemical Weapons Convention Annex on Chemicals" (Dkt. 1332).

Counts 12-14 charge Mr. Miske with violations of 18 U.S.C. § 229, arising from

the release of a substance charged to be chloropicrin in the District and Ginza Nightclubs on March 4 and 5, 2017. 18 U.S.C. § 229F(8)(B) defines “toxic chemicals” to include the chemicals “listed in schedules contained in the Annex on Chemicals of the Chemical Weapons Convention” (including chloropicrin, which is listed in Schedule 3). This Annex is a provision of *law*. It is not evidence. Just as the schedules of controlled substances are inadmissible provisions of law in drug cases, so too is the Annex on Chemicals of the Chemical Weapons Convention inadmissible in this case.

Likewise, “expert” testimony on the Chemical Weapons Convention and its Annex, including chloropicrin’s inclusion in Schedule 3 thereof, is also inadmissible, because it would invade the exclusive province of the Court to instruct the jury on the law. *See* Mr. Miske’s Proposed Jury Instructions on Counts 12-14 (Dkt. 1306, PageID.12394-12400, also attached hereto as Exhibit 1). *See also Nationwide Transp. Fin. v. Cass Info. Sys. Inc.*, 523 F.3d 1051, 1058 (9<sup>th</sup> Cir. 2008) (“instructing the jury as to the applicable law is the distinct and exclusive province of the court”) (*quoting Hangarter v. Provident Life & Accident Ins. Co.*, 373 F.3d 998, 1016 (9<sup>th</sup> Cir. 2004) (internal citations and quotation marks omitted); *see also* Fed. R. Evid. 702 (expert testimony must assist trier of fact to understand *evidence* or determine a *fact* in issue).

The government’s “Notice” also makes reference to “background” on the Chemical Weapons Convention and its “implementing body.” These issues are entirely irrelevant under Fed.R.Evid. 401 and unfairly prejudicial, confusing and misleading under Fed.R.Evid. 403.

DATED: February 26, 2024, Honolulu, Hawaii.

/s/ Michael J. Kennedy

MICHAEL J. KENNEDY

/s/ Lynn E. Panagakos

LYNN E. PANAGAKOS

Counsel for Defendant

MICHAEL J. MISKE, JR (01)

CERTIFICATE OF  
SERVICE

I, Lynn E. Panagakos, hereby certify that a true and correct copy of this document this filing has been duly served on all counsel of record through the court's electronic filing system.

DATED: Honolulu, Hawai'i, February 26, 2024.

/s/ Lynn E. Panagakos  
LYNN E. PANAGAKOS